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 7 The United States Olympic Committee and
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8
UNITED STATES DISTRICT COURT
 9
NORTHERN DISTRICT OF CALIFORNIA

11 The United States Olympic
 12 Committee and the International
 13 Olympic Committee,

14 Plaintiffs,

15 v.

16 Xclusive Leisure & Hospitality Ltd.;
 Beijingticketing.com; 2008-
 17 Olympics.com;
 Beijingolympic2008tickets.com;
 Beijingolympictickets2008.com;
 18 Olympic-tickets.net;
 Olympicticketsbeijing2008.com;
 19 Does 1-10, inclusive,

20 Defendants.

Case No. C 08-01345- JSW

**MEMORANDUM IN SUPPORT OF
 PLAINTIFFS' EX PARTE MOTION
 FOR EXTENSION OF
 TEMPORARY RESTRAINING
 ORDER AND TO CONTINUE
 PRELIMINARY INJUNCTION
 HEARING**

Date: August 13, 2008

Time: 9:00 a.m.

Judge: Hon. Jeffrey S. White

1 Pursuant to Rule 65(b)(2) of the Federal Rules of Civil Procedure, the Court,
 2 for good cause shown, may extend the Temporary Restraining Order (Doc. # 17)
 3 for a maximum of 20 days from the date the Order was issued. *See Fernandez-*
 4 *Roque v. Smith*, 671 F.2d 426, 429 (11th Cir. 1982). There is very little case law on
 5 what constitutes good cause for purposes of Rule 65(b)(2). However, in *Flying*
 6 *Cross Check, L.L.C. v. Central Hockey League, Inc.*, 153 F. Supp. 2d 1253, 1260
 7 (D. Kan. 2001), the court stated:

8 A leading treatise offers “although there does not seem to
 9 be any case law on what constitutes ‘good cause’ for
 10 purposes of extending a Rule 65(b) order, a showing that
 11 the grounds for originally granting the temporary
 12 restraining order continue to exist should be sufficient.”
 13 11A Charles A. Wright, Arthur R. Miller, Mary Kay
 14 Kane, *Federal Practice and Procedure*, § 2953 p. 279
 15 (1995). In *S.E.C. v. Comcoa Ltd.*, 887 F. Supp. 1521,
 16 1526 n. 7 (S.D. Fla. 1995), “good cause” was the court’s
 17 need for “time to fully consider the various arguments and
 18 motions of the parties.” In other contexts, the “good
 19 cause” standard focuses on the diligence of the party
 20 seeking the change who “must show that despite due
 21 diligence it could not have reasonably met the scheduled
 22 deadlines.” *Deghand v. Wal-Mart Stores, Inc.*, 904 F.
 23 Supp. 1218, 1221 (D. Kan. 1995).

24 Plaintiffs easily meet the “good cause” requirement as described above.
 25 First, the grounds for originally granting the temporary restraining order still exist:
 26 the Beijing Games are ongoing and there remains a significant likelihood that
 27 consumers could be defrauded. In fact, on the homepages of Defendants’ websites,
 28 Defendants promised to offer tickets to the 2010 Olympic Games in Vancouver
 when they became available. Declaration of Kai Lintumaa In Support of Plaintiffs’
 Application for Temporary Restraining Order (“Lintumaa Decl.”), Ex. A.

29 Second, under the requirements of Rule 65(a)(1), a “court may issue a
 30 preliminary injunction only on notice to the adverse party.” Despite due diligence
 31 by Plaintiffs, Plaintiffs have to yet to acquire information sufficient to locate and
 32 contact Defendants that would satisfy this notice requirement. On August 4, 2008,
 33 immediately upon receipt of the Court’s Temporary Restraining Order, Plaintiffs

1 sent the Court's Order attached to a letter by email to eNom Inc. and VeriSign, Inc.
 2 seeking a registrar's hold on and the identity of the owners of the domain names,
 3 olympic-tickets.net, beijingticketing.com, beijingolympic2008tickets.com,
 4 beijingolympictickets2008.com, olympicticketsbeijing2008.com, 2008-
 5 Olympics.com; and buy-olympic-tickets.co.uk. On August 5, 2008, eNom sent an
 6 email to Plaintiffs' counsel confirming that they had placed a registrar's hold on all
 7 of the websites except for the .co.uk website and sending the whois information
 8 they had on file identifying the owner of the relevant domain names. *See* Exhibit
 9 A. The email provided that the owner of the domain names was XLH, Suite 700,
 10 2415 East Camelback Road, Phoenix, AZ.

11 This is a nonexistent address, however. Lintumaa Dec., ¶ 14. On July 22,
 12 2008 Plaintiffs' counsel attempted serving Defendants with the Complaint and
 13 Plaintiffs' Ex Parte Application for Temporary Restraining Order at the East
 14 Camelback Road address, but the papers were returned as undeliverable to that
 15 address. Plaintiffs had been serving their pleadings and the Court's orders to
 16 sales@beijingticketing.com, but that address is now disabled.¹ eNom reported that
 17 the email address for XLH was bulkregisterdomains@gmail.com, but this, too,
 18 suggests a false address.

19 Plaintiffs' counsel contacted the compliance departments of eNom Inc.,
 20 VeriSign, Inc. and ServePath to determine what, if any, identifying information
 21 these entities kept on file relating to domain name registrants. As a result, on
 22 August 8, 2008, Plaintiffs served subpoenas to eNom Inc., VeriSign, Inc. and
 23 ServePath seeking contracts and billing information which could lead to the identity
 24 of the persons or entities behind the XLH front.

25 Plaintiffs have recently obtained information from other sources that the
 26 websites are operated by persons or entities doing business as Xclusive Leisure &
 27

28 ¹ The email address appears to have been disabled the morning before this Court issued the temporary restraining order. Meninsky Dec. ¶¶ 2, 4, Ex. B.

1 Hospitality Ltd. whose registered address is c/o B and C Associates, Trafalgar
 2 House, Grenville Place, Mill Hill, London, England NW7 3S. Declaration of Carla
 3 Meninsky In Support of Plaintiff's Motion For Extension ("Meninsky Dec.") ¶ 6.
 4 Xclusive Leisure & Hospitality Ltd lists its trading address to be 202 Blackfriars
 5 Road, London SE1 8NJ, however, this is in fact an accommodation address² or mail
 6 drop. Id., ¶¶ 5, 6, Ex. C. The address given for Alan Thomas Scott, who is listed as
 7 the sole director of the English company, Xclusive Leisure & Hospitality Ltd, and
 8 its associated company, Xclusive Tickets Limited, remains to be investigated. Id.,
 9 ¶¶ 3, 6, Ex. A. Plaintiffs have yet to verify this information through documents
 10 obtained through the subpoenas.

11 Without the Court's ability to properly notice Defendants, Plaintiffs are
 12 prejudiced as they are prevented from obtaining the injunctive relief they seek. The
 13 Court's Order expires August 14, 2008. The multiple false addresses associated
 14 with Xclusive Leisure & Hospitality Ltd, have conspired to prevent Plaintiffs from
 15 obtaining the necessary identifying information in time for the injunction hearing
 16 on August 13, 2008.

17 For the foregoing reasons, Plaintiffs respectfully suggest that good cause
 18 exists for the Court to extend the Temporary Restraining Order and continue the
 19 hearing. The grounds for originally granting the Temporary Restraining Order
 20 continue to exist. And, Plaintiffs, despite due diligence, have been unable to
 21 ascertain the location and identity of the owner of the disputed domain names.
 22 Accordingly, Plaintiffs respectfully request that the Court extend the Temporary
 23 Restraining Order for 20 days from the date of its issuance and likewise continue
 24 the hearing on the preliminary injunction.

25 _____
 26 ² From Wikipedia: "**Accommodation address** is a term used mostly in the United Kingdom to
 27 denote a location where mail can be delivered in the name of a person or business for retrieval...
 28 The popular notion of an accommodation address is a small, seedy shop whose owner accepts
 mail for people for a weekly fee."

1 Dated: August 8, 2008
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7 O'MELVENY & MYERS LLP
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By:s/ Diana M. Torres
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